IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5258 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN SUREESHBHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5258 of 2001

MR BC DAVE for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/10/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Vadodara City, Vadodara, vide order dated March 24, 2001, Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining

authority has considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act as three cases under the Prohibition Act are registered against her which are pending trial and statements of three anonymous witnesses in an unregistered case are also recorded and, therefore, according to the detaining authority, the activities of the petitioner are prejudicial to the maintenance of public order and hence powers under Section 9 (2) of the Act are exercised by the detaining authority by not disclosing the identity of those witnesses and detained the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing the impugned order of detention and setting her at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. B.C. Dave, learned advocate for the petitioner has restricted his arguments on the aspect of delay in recording the order of detention without giving satisfactory explanation on the part of the detaining authority and, therefore, according to him, the order of detention is vitiated. Besides this, he has also contended that in the impugned order of detention, the detaining authority has considered three cases registered against the petitioner under the Prohibition Act. In the said cases, the first case is registered on January 12, 1999, the second case is registered on November 20, 2000 and the last case is registered on January 3, 2001. So far as the first and second cases registered against the petitioner are concerned, they are of the year 1999 and 2000 respectively and, therefore, they are old cases and on the basis of those cases it cannot be said that the petitioner's activities are prejudicial to the maintenance of public order. So far as the last case is concerned, it is registered on January 3, 2001, and the order of detention came to be passed on March 24, 2001, that is, after about 2 months and 21 days from the date of registration of the last offence. Therefore, according to the learned advocate for the petitioner, on account of the delay which is not explained by the detaining authority, the order of detention is vitiated and on this ground alone the petition deserves to be allowed.

5. Mr. K.T. Dave, learned APP has appeared on behalf of the respondents and opposed the petition by

filing affidavit in reply sworn by the Commissioner of Police, Vadodara City, Vadodara. He contended that the last offence against the petitioner came to be registered on January 3, 2001 and after that also she continued to indulge in antisocial activities and the same is clearly disclosed in the statements of the witnesses which are recorded on February 26, 2001, March 1, 2001 and March 4, 2001. Therefore, in view of the continued involvement of the petitioner in anti social activities, she should not be set at liberty. Moreover, the order of detention was passed by the detaining authority after considering all the aspects of the matter and also the continued involvement of the petitioner in antisocial activities and, therefore, he urged to dismiss the petition.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. There is no manner of doubt that three offences are registered against the petitioner. The last offence is registered on January 3, 2001 whereas the impugned order of detention came to be passed on March 24, 2001. But prior to recording of the order of detention, the detaining authority has recorded statements of three anonymous witnesses on February 26, 2001, March 1, 2001 and March 4, 2001 upon which reliance is placed while passing the order of detention against the petitioner but no offence is registered against the petitioner on the basis of the said statements and, therefore, it is clear that the said statements are recorded with a view to fill up the gap between the date of registration of the last offence against the petitioner and the order of detention, which is about 2 months and 21 days.

8. The Supreme Court in the case of Anand Prakash v. State of UP, AIR 1990 SC 516 has observed that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. Similar view is expressed by this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City, 1997 (1) GLH 381.

10. Applying the principles enunciated by the Supreme Court and this Court in the above cited judgments to the facts of the present case, it is clear that the last offence against the petitioner is recorded on March 4, 2001 which cannot be a proximate cause and therefore unexplained delay makes the order of detention not

proximate and vitiates the order of detention itself. So far as the contention made in paragraph 6 of the affidavit in reply with regard to recording of the statement of independent witnesses is concerned, it has no substance in view of the fact that with a view to cover up the gap between the registration of last offence and the order of detention, statements of three anonymous witnesses have been recorded without registering any offence against the petitioner on the basis of the said statements and, therefore, on the ground of delay alone, the order of detention is required to be quashed and set aside and the petition is required to be allowed.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)